

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|-------------------------|---|--------------|
| MICHAEL TYRONE COLSTON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CIV-05-213-L |
| |) | |
| JOHN WHETSEL, et al., |) | |
| |) | |
| Defendants. |) | |

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. §1983 on February 22, 2005. The undersigned reviewed the file and determined that the motion to proceed *in forma pauperis* had not been submitted by Plaintiff. On February 24, 2005, an Order was entered directing Plaintiff to cure this deficiency by March 16, 2005, or the Court would recommend the dismissal of the action without prejudice. The Order was mailed to Plaintiff at his last known address at the Oklahoma County Detention Center. However, on February 28, 2005, the Order was returned to the Clerk's Office with the remarks "Gone 2-18-05." On March 2, 2005, a separate Order reflecting the referral of this matter to the undersigned for initial proceedings pursuant to 28 U.S.C. §636(b)(1)(B) was also returned to the Court Clerk's Office marked "Gone 2-18-05." Plaintiff has not provided the Court with a current address as required by LCvR 5.1. As of this date, Plaintiff has failed to comply or file any further pleadings with the Court.

Plaintiff's lack of interest in complying with the Court's Orders combined with the Court's attempt to manage and control its caseload warrant a dismissal of the Complaint without prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

RECOMMENDATION

In view of the foregoing, the undersigned recommends that the action be dismissed without prejudice with failure to comply with the Court's Order. The Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by April 11, 2005, in accordance with 28 U.S.C. §636 and LCvR 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 21st day of March, 2005.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE